

1 DONALD B. MARKS (S.B.N. 43538)
MARKS & BROOKLIER, LLP
2 10100 Santa Monica Blvd.
Suite 300
3 Los Angeles, CA 90067
Telephone: 310/772-2287
4 Facsimile: 310/772-2286

5 Attorney for Defendant
MOSHE MALUL
6
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9 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION

11 UNITED STATES OF AMERICA,)

12 Plaintiff,)

13 vs.)

14 MOSHE MALUL, et al.)

15 Defendants.)
16)
17)

No. CR 08-1033-CAS

NOTICE OF MOTION AND MOTION
FOR AN ORDER THAT PERMITS
ALL DISCOVERY PROVIDED BY
THE GOVERNMENT TO BE
TRANSFERRED, DISSEMINATED
OR SENT OUTSIDE THE UNITED
STATES; DECLARATION OF
DONALD B. MARKS

Date: June 13, 2011

Time: 1:30 p.m.

Place: Courtroom of
Hon. Christina A. Snyder

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20 TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO PLAINTIFF
21 AND ITS ATTORNEY, J. MARK CHILDS:

22 PLEASE TAKE NOTICE that on June 13, 2011, at the hour of 1:30 p.m., or as
23 soon thereafter as counsel may be heard in the Courtroom of the Honorable Christina A.
24 Snyder, United States District Judge, defendant Moshe Malul will move this Court for
25 order authorizing counsel for defendant Moshe Malul to transfer disseminate or send the
26 discovery or copies thereof (including, but not limited to, paper or electronic copies of the
27 discovery) outside the United States, to defendant Malul's attorney in Israel, Yaniv
28 Segev.

1 This motion is based upon the Notice of Motion, the stipulation re: Order for
2 Protective Order; the Declaration of Donald B. Marks in support thereof; all records and
3 pleadings filed in this case and any such other evidence or argument which may be
4 presented at a hearing on this Motion.

5
6 DATED: 5/11, 2011

7 Respectfully submitted,

8 MARKS & BROOKLIER, LLP

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10 By: 

11 DONALD B. MARKS
12 Attorney for Defendant
13 MOSHE MALUL
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DECLARATION OF DONALD B. MARKS

I, DONALD B. MARKS, declare as follows:

1. I am an attorney at law duly licensed to practice law in the State of California and am a partner of the law firm of Marks & Brooklier, attorneys of record for defendant MOSHE MALUL in the above-captioned action. The following facts are within my personal knowledge, and if called upon as a witness, I could and would competently testify to the truth of the matters asserted herein.

2. On or about January 24, 2011, I executed the Stipulation Re: Order for Protective Order Limiting Disclosure of Witness Information ("Stipulation"). Copies of the Stipulation and Order are attached hereto as Exhibits "A" and "B" respectively and by reference made a part hereof. Paragraph 9 of the Stipulation requires defense counsel to obtain a written order from this Court specifically authorizing counsel to transfer, disseminate or send any of the discovery provided herein outside the United States.

3. I have previously given oral notice to the government of my intention to seek permission from this Court under the procedures set forth in para. 9 of the Stipulation. In our telephone conversation AUSA Mark Childs indicated that the government waived any requirement of written notice under the terms of the Stipulation.

4. Defendant Malul's defense counsel in Israel, Yaniv Segev, has represented the defendant throughout the extradition hearings in Israel (over a span of several years) and has substantial knowledge of the instant case and the allegations set forth in the Indictment. It is critical for the preparation of the defense in this case that Mr. Segev have access to the discovery during the pre-trial preparation stage.

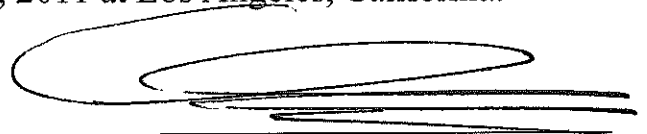
5. Based on the foregoing, counsel for defendant Malul is requesting that he be authorized to transfer paper and/or electronic copies of the discovery to the defendant's attorney in Israel, Yaniv Segev.

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1 I declare under penalty of perjury that the foregoing is true and correct to the best
2 of my knowledge.

3 Executed on this 11th day of May, 2011 at Los Angeles, California.

4 A handwritten signature in black ink, appearing to read 'DONALD B. MARKS', is written over a horizontal line.

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6 DONALD B. MARKS
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EXHIBIT “A”

1 ANDRÉ BIROTTE JR.
 United States Attorney
 2 ROBERT E. DUGDALE
 Assistant United States Attorney
 3 Chief, Criminal Division
 J. MARK CHILDS (California Bar No.: 162684)
 4 Assistant United States Attorney
 Organized Crime Drug Enforcement
 5 Task Force Section
 1400 United States Courthouse
 6 312 North Spring Street
 Los Angeles, California 90012
 7 Telephone: (213) 894-2433
 Facsimile: (213) 894-0142
 8 Email: mark.childs@usdoj.gov

9 Attorneys for Plaintiff
 UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT
 12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,	)	No. CR 08-1033-CAS
14)	
Plaintiff,	)	<u>STIPULATION RE: [PROPOSED]</u>
15	)	<u>ORDER FOR PROTECTIVE ORDER</u>
v.	)	<u>LIMITING DISCLOSURE OF WITNESS</u>
16	)	<u>INFORMATION</u>
ITZHAK ABERGIL, et al.,)	
17)	
Defendants.)	
18)	

19 As evidence by the signatures of the counsel of record for
 20 plaintiff, the United States Attorney for the Central District of
 21 California, and defendants ITZHAK ABERGIL, MEIR ABERGIL, SASSON
 22 BARASHY, MOSHE MALUL and ISRAEL OZIFA (collectively,
 23 "defendants"), the parties hereby stipulate and agree as follows:

24 1. In order to avoid the unauthorized dissemination of
 25 (1) material revealing the name and other identifying information
 26 of certain confidential informants ("Confidential Informants") in
 27 this case, and (2) material that reveal privacy and sensitive
 28 information of witnesses, potential witnesses and third parties,

1 namely, social security numbers, passport numbers, dates of birth,
2 home addresses, financial account numbers, and phone numbers
3 (collectively, "Sensitive Information"), the government will
4 redact the names of Confidential Informants and Sensitive
5 Information, other identifying information, and non-case related
6 information from documents within the written and electronic
7 discovery that the government will provide or has provided to
8 defense counsel in this case of U.S. v. Itzhak Abergil et al., CR
9 No. 08-1033-CAS (referred to herein collectively as "Discovery").
10 The Discovery will be marked with bates stamp numbers and will be
11 provided with a cover letter indicating that the Discovery is for
12 the Abergil case. The Discovery that is subject to the protective
13 order includes, but is not limited to, any written documentation,
14 electronic data and audio recordings. The protective order for
15 the Discovery covers and includes any documentation or audio
16 recordings provided to the defense team, defined below, before or
17 after the execution of the protective order.

18 2. For purposes of this stipulation, the term "Defense
19 Team" refers to each defendant and their respective counsel of
20 record. "Defense Team" refers to each attorney in the Federal
21 Public Defender's Service specifically assigned to work on this
22 case, including Samuel Josephs, Stephen Demik and David Sutton.
23 Also, the term "Defense Team" includes any defense investigators,
24 employees, experts or translators hired by the counsel of record
25 for each defendant who are assisting a defendant's counsel with
26 this case and who have provided the government with a letter or e-
27 mail indicating that they have read this order and agree to be
28 bound by its terms. "Defense team" includes any subsequent

1 counsel of record, should current counsel of record be relieved
2 from this case or should another defendant's counsel be added to
3 the Court's docket.

4 3. Counsel for each defendant represents that he or she has
5 discussed this stipulation and [proposed] protective order with
6 defendant and defendant agrees to be bound by this stipulation and
7 the protective order, if executed by the Court.

8 4. The defense team will not provide Discovery or copies
9 thereof (including, but not limited to, paper or electronic copies
10 of the Discovery) to anyone other than the Defense Team, except as
11 permitted below, without first notifying the government in writing
12 of defense counsel's intention to do so and obtaining permission
13 in advance from the Court by noticed motion.

14 5. This stipulation does not prohibit the Defense Team from
15 (a) discussing the contents of the Discovery with a witness or
16 potential witness in this case ("Witness") or (b) showing a copy
17 of the Discovery to a Witness in this case.

18 6. The Defense Team will not provide Discovery or copies
19 thereof (including, but not limited to, paper or electronic copies
20 of the Discovery) to anyone other than the Defense Team, except as
21 permitted below, without first notifying the government of defense
22 counsel's or a member of the Defense Team's intention to do so and
23 obtaining permission in advance from the Court by noticed motion.

24 7. The Defense Team shall return the Discovery (including,
25 but not limited to, paper or electronic copies), immediately upon
26 the expiration of the time for their respective defendant's last
27 available direct appeal from sentencing, plea or verdict. Direct
28 appeals do not include post-conviction collateral attack on the

1 conviction or sentence, such as a motion under 18 U.S.C. § 2255.

2 8. The government maintains that the sought protective
3 order is necessary in order to protect the privacy and security of
4 witnesses and third-parties. See Foltz v. State Farm Mutual
5 Automobile Insurance Company, 331 F.3d 1122, 1137 (9th Cir. 2003)
6 (Holding third party privacy information can be protected by
7 "[s]imply redacting the identifying information of third parties
8 (e.g., their names, addresses, telephone numbers, and social
9 security numbers from the[ir] records and disclosing the remaining
10 information)"); In re Crawford, 194 F.3d 954, 958 (9th Cir.1999)
11 (holding that public disclosure of Social Security numbers may
12 implicate the constitutional right to informational privacy out of
13 fear of identity theft); Keith H. V. Long Beach Unified School
14 District, 228 F.R.D. at 659 (Holding requested protective order
15 for "financial information" reasonable because "financial
16 information is usually private . . ."). Also, the government
17 maintains that this procedure is necessary in order to protect the
18 safety of the confidential informants. See Hernandez, 608 F.2d
19 741, 745 (9th Cir. 1979).

20 9. The parties agree that the Defense Team shall not
21 transfer, disseminate or send any of the Discovery outside of the
22 United States, except after complying with the procedures below.
23 The parties agree that the discovery or copies thereof (including,
24 but not limited to, paper or electronic copies of the Discovery)
25 will not be transferred, disseminated or sent outside the United
26 States by the Defense Team without the respective defendant's
27 counsel of record (1) providing the government with ten days
28 written advance notice of the Defense Team's intention to send any

1 Discovery outside the United States and (2) obtaining a written
2 order from the Court (based a regularly notice motion) that
3 specifically authorizes the Defense Team to transfer, disseminate
4 or send any of the Discovery outside the United States.

5 IT IS SO STIPULATED. Respectfully submitted,

6 DATE: January 24, 2011


VICTOR SHERMAN
Attorney for ITZHAK ABERGIL

9
10 DATE: January __, 2011

ANTHONY P. BROOKLIER
Attorney for MEIR ABERGIL

11
12 DATE: January __, 2011

SAMUEL JOSEPHS/DAVID SUTTON
Deputy Federal Public Defenders
Attorney for SASSON BARASHY

13
14
15 DATE: January __, 2011

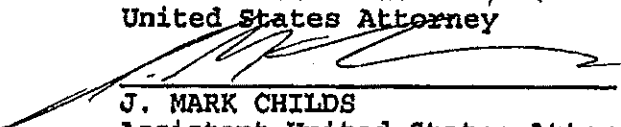
DONALD B. MARKS
Attorney for MOSHE MALUL

16
17
18 DATE: January __, 2011

JAMES R. TEDFORD
Attorney for ISRAEL OZIFA

19
20
21 DATED: January 25, 2011

ANDRÉ BIROTTE JR.
United States Attorney



J. MARK CHILDS
Assistant United States Attorney

1 Discovery outside the United States and (2) obtaining a written
2 order from the Court (based a regularly notice motion) that
3 specifically authorizes the Defense Team to transfer, disseminate
4 or send any of the Discovery outside the United States.

5 IT IS SO STIPULATED. Respectfully submitted,

6 DATE: January__ , 2011

VICTOR SHERMAN
Attorney for ITZHAK ABERGIL

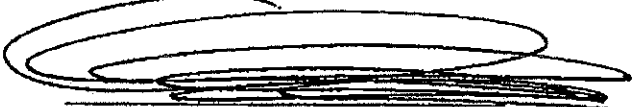
7
8
9 DATE: January 24, 2011


ANTHONY P. BROOKLIER
Attorney for MEIR ABERGIL 

10
11
12 DATE: January__ , 2011

SAMUEL JOSEPHS/DAVID SUTTON
Deputy Federal Public Defenders
Attorney for SASSON BARASHY

13
14
15 DATE: January 24, 2011

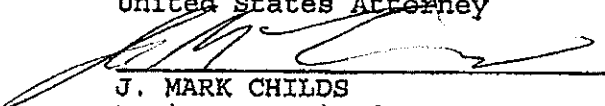

DONALD B. MARKS
Attorney for MOSHE MALUL

16
17
18 DATE: January__ , 2011

JAMES R. TEDFORD
Attorney for ISRAEL OZIFA

19
20
21 DATED: January 24, 2011

ANDRÉ BIROTTE JR.
United States Attorney


J. MARK CHILDS
Assistant United States Attorney

1 Discovery outside the United States and (2) obtaining a written
2 order from the Court (based a regularly notice motion) that
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4 or send any of the Discovery outside the United States.

5 IT IS SO STIPULATED. Respectfully submitted,

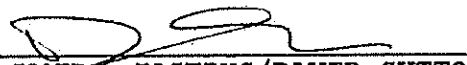
6 DATE: January__ , 2011

VICTOR SHERMAN
Attorney for ITZHAK ABERGIL

9 DATE: January__ , 2011

ANTHONY P. BROOKLIER
Attorney for MEIR ABERGIL

12 DATE: January2 , 2011


SAMUEL JOSEPHS/DAVID SUTTON
Deputy Federal Public Defenders
Attorney for SASSON BARASHY

15 DATE: January__ , 2011

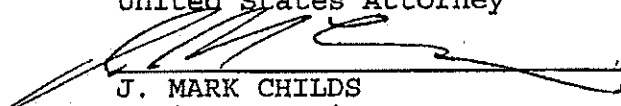
DONALD B. MARKS
Attorney for MOSHE MALUL

18 DATE: January__ , 2011

JAMES R. TEDFORD
Attorney for ISRAEL OZIFA

21 DATED: January25, 2011

ANDRÉ BIROTTE JR.
United States Attorney


J. MARK CHILDS
Assistant United States Attorney

1 Discovery outside the United States and (2) obtaining a written
2 order from the Court (based a regularly notice motion) that
3 specifically authorizes the Defense Team to transfer, disseminate
4 or send any of the Discovery outside the United States.

5 IT IS SO STIPULATED. Respectfully submitted,

6
7 DATE: January__ , 2011

VICTOR SHERMAN
Attorney for ITZHAK ABERGIL

8
9
10 DATE: January__ , 2011

ANTHONY P. BROOKLIER
Attorney for MEIR ABERGIL

11
12 DATE: January__ , 2011

SAMUEL JOSEPHS/DAVID SUTTON
Deputy Federal Public Defenders
Attorney for SASSON BARASHY

13
14
15
16 DATE: January__ , 2011

DONALD B. MARKS
Attorney for MOSHE MALUL

17
18 DATE: January 24 , 2011

JAMES R. TEDFORD
Attorney for ISRAEL OZIFA

19
20
21 DATED: January 25 , 2011

ANDRÉ BIROTTE JR.
United States Attorney

J. MARK CHILDS
Assistant United States Attorney

EXHIBIT “B”

1 ANDRÉ BIROTTE JR.
 United States Attorney
 2 ROBERT E. DUGDALE
 Assistant United States Attorney
 3 Chief, Criminal Division
 J. MARK CHILDS (California Bar No.: 162684)
 4 Assistant United States Attorney
 Organized Crime Drug Enforcement
 5 Task Force Section
 1400 United States Courthouse
 6 312 North Spring Street
 Los Angeles, California 90012
 7 Telephone: (213) 894-2433
 Facsimile: (213) 894-0142
 8 Email: mark.childs@usdoj.gov

9 Attorneys for Plaintiff
 UNITED STATES OF AMERICA
 10

11 UNITED STATES DISTRICT COURT
 12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,	)	No. CR 08-1033-CAS
14)	
Plaintiff,	)	<u>PROPOSED ORDER RE:</u>
15	)	<u>PROTECTIVE ORDER LIMITING</u>
v.	)	<u>DISCLOSURE OF WITNESS</u>
16	)	<u>INFORMATION</u>
ITZHAK ABERGIL, et al.,)	
17)	
Defendants.)	
18)	

19 Having considered the stipulation between the United States
 20 Attorney for the Central District of California and defendants
 21 ITZHAK ABERGIL, MEIR ABERGIL, SASSON BARASHY, MOSHE MALUL and
 22 ISRAEL OZIFA (collectively, "defendants"), and the files and
 23 records in this case, IT IS HEREBY ORDERED, as follows:

24 1. In order to avoid the unauthorized dissemination of
 25 (1) material revealing the name and other identifying information
 26 of certain confidential informants ("Confidential Informants") in
 27 this case, and (2) material that reveal privacy and sensitive
 28 information of witnesses, potential witnesses and third parties,

1 namely, social security numbers, passport numbers, dates of birth,
2 home addresses, financial account numbers, and phone numbers
3 (collectively, "Sensitive Information"), the government will
4 redact the names of Confidential Informants and Sensitive
5 Information, other identifying information, and non-case related
6 information from documents within the written and electronic
7 discovery provided to defense counsel in this case of U.S. v.
8 Itzhak Abergil et al., CR No. 08-1033-CAS (referred to herein
9 collectively as "Discovery").

10 2. The Discovery that is subject to this protective order
11 will be marked with bates stamp numbers and will be provided with
12 a cover letter or e-mail indicating that the Discovery is for the
13 Abergil case. This Discovery includes, but is not limited to, any
14 written documentation, electronic data and audio recordings. This
15 protective order applies to any documentation, electronic data or
16 audio recordings provided to the defense team, defined below,
17 before or after the execution of the protective order.

18 3. For purposes of this Order, the term "defense team"
19 refers to each defendant and each defendant's counsel of record.
20 Also, the term "defense team" includes any defense investigators,
21 employees, experts or translators hired by each defendant's
22 counsel of record who are assisting each defendant's counsel with
23 this case and who have provided the government with a letter or e-
24 mail indicating that they have read this order and agree to be
25 bound by its terms. "Defense team" includes any subsequent
26 counsel of record, should current counsel of record be relieved
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1 from this case or should another defendant's counsel be added to
2 the Court's docket.

3 4. Defendant's counsel represents that he or she has
4 discussed this protective order with defendant and defendant
5 agrees to be bound by this protective order. Each defense counsel
6 is required to provide a copy of this executed order to their
7 client in this case and have this order translated (verbally or in
8 writing) from English to Hebrew to their client because each of
9 the defendants require a Hebrew interpreter to translate written
10 English.

11 5. The defense team will not provide Discovery or copies
12 thereof (including, but not limited to, paper or electronic copies
13 of the Discovery) to anyone other than the defense team, except as
14 permitted below, without first notifying the government of defense
15 counsel's or a member of the defense team's intention to do so and
16 obtaining permission in advance from the Court.

17 6. This Order does not prohibit the Defense team from (a)
18 discussing the contents of the Discovery with a witness or
19 potential witness ("Witness") in this case or (b) showing a copy
20 of the Discovery to a Witness in this case.

21 7. Although the defense team is permitted to show a Witness
22 the Discovery or a copy thereof, the defense team is prohibited
23 from allowing a Witness or anyone other than a member of the
24 Defense team to maintain possession of the Discovery outside the
25 presence of the defense team, without prior Court authorization.
26 The defense team shall not permit anyone but the defense team to
27 keep physical possession of the Discovery provided pursuant to
28 this stipulation.

1 8. The defense team shall return the Discovery (including,
2 but not limited to, paper or electronic copies), immediately upon
3 the expiration of the time for defendant's last available direct
4 appeal from sentencing, plea or verdict. Direct appeals do not
5 include post-conviction collateral attack on the conviction or
6 sentence, such as a motion under 18 U.S.C. § 2255.

7 9. The parties agree it is necessary in order to protect
8 the privacy and security of all parties, including third-parties
9 and defendant. See Foltz v. State Farm Mutual Automobile
10 Insurance Company, 331 F.3d 1122, 1137 (9th Cir. 2003) (Holding
11 third party privacy information can be protected by "[s]imply
12 redacting the identifying information of third parties (e.g.,
13 their names, addresses, telephone numbers, and social security
14 numbers from the[ir] records and disclosing the remaining
15 information)"); In re Crawford, 194 F.3d 954, 958 (9th Cir.1999)
16 (holding that public disclosure of Social Security numbers may
17 implicate the constitutional right to informational privacy out of
18 fear of identity theft); Keith H. V. Long Beach Unified School
19 District, 228 F.R.D. at 659 (Holding requested protective order
20 for "financial information" reasonable because "financial
21 information is usually private . . ."). Also, this procedure is
22 necessary in order to protect the safety of the confidential
23 informants. See Hernandez, 608 F.2d 741, 745 (9th Cir. 1979).

24 10. This Order prohibits the Defense Team from transferring,
25 disseminating or sending any of the Discovery outside of the
26 United States. None of the discovery or copies thereof
27 (including, but not limited to paper or electronic copies of the
28 Discovery) is to be transferred, disseminated or sent outside the

1 United States without the Defense Team (1) providing the
2 government with ten days written advance notice of their intention
3 to send any Discovery outside the United States and (2) obtaining
4 a written order from this Court (based on regular noticed motion)
5 that specifically authorizes the Defense Team to transfer,
6 disseminate or send any of the Discovery outside of the United
7 States.

8
9
10 DATED: January 27, 2011


HONORABLE CHRISTINA A. SYNDER
United States District Court